Editor's note: Overruled -- See Sky Pilots of Alaska, Inc., 40 IBLA 355 (May 14, 1979)

CITY OF MONTE VISTA, COLORADO

IBLA 75-349 Decided September 22, 1975

Appeal from decision of the Colorado State Office, Bureau of Land Management, declaring divestiture of title to lands granted under the Recreation and Public Purposes Act (C-07349).

Affirmed.

1. Patents of Public Lands: Generally -- Public Lands: Disposals of: Generally -- Recreation and Public Purposes Act

   The Recreation and Public Purposes Act, and the pertinent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified recreational uses proposed in the patent application within a reasonable time following the date of issuance of patent.

2. Patents of Public Lands: Generally -- Public Lands: Disposals of: Generally -- Recreation and Public Purposes Act

   Failure over an eighteen-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified recreational uses proposed in the patent application and set out in the patent is a violation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

APPEARANCES: Eugene L. Farish, Attorney for the City of Monte Vista, Colorado, for appellant; William G. Kelly, Jr., Esq., Division of Energy and Resources, Office of the Solicitor, Department of the Interior, for the United States.

OPINION BY ADMINISTRATIVE JUDGE RITVO

The City of Monte Vista, Colorado, has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated January 20, 1975, which held that appellant's failure over an eighteen-year period to develop the recreational uses specified in its patent application and patent granted under the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1954), constituted a violation of the reversionary provision of the patent which effected a divestiture of the City's title to the land and the revestiture thereof in the United States.

Pursuant to the requirements of the Recreation and Public Purposes Act, on April 25, 1955, the City of Monte Vista filed an amended application, Colorado-07349, for approximately 360 acres of land consisting of two separate tracts lying along Rock Creek, approximately seven miles southwest of the City, and situated adjacent to the Rio Grande National Forest. In its application, the City stated that it wished to purchase the land for recreational purposes for the use and benefit of the citizens of the City and of the general public. Appellant's patent application included the following plans:

Proposed
PLAN OF DEVELOPMENT
ROCK CREEK CITY PARK
By City of
MONTE VISTA, COLORADO.

I. GENERAL PLAN. The City proposes to budget its expenditures on parks and playgrounds over a period of approximately ten years and to appropriate about $500.00 per year for improving the Rock Creek Park, in addition to new parks within the City. * * *

* * *

DETAILS OF PLANS

V. a. Rebuild and/or improve existing road, now known as Forest Service Road; or

b. Establish new road, from the Northeast, beginning South of Monte Vista, thence Southwesterly along foot hills, crossing Dry Creek to Rock Creek Canyon; Estimated Costs, $1250.00

VI. a. Repair and increase number of fireplaces, picnic tables, benches, etc, at present camp sites (to be done partly by service clubs); Estimated Cost, to City, $250.00

b. Clear away dead brush, pile up fire wood and increase number of camp or picnic sites; reduce fire hazards; Estimated Cost, $500.00

c. Develop springs sources of water supply with underground pipes, faucets and drinking fountains, with waste and drain valves to prevent freezing; Estimated Cost, $1500.00

d. Establish boundaries of the park area and set appropriate signs and post instructions to and restrictions upon park visitors; Estimated Cost, $200.00

e. Miscellaneous improvements and contingencies; $900.00

VII.a. Make surveys to locate possible reservoir sites for small swimming pools and larger pools for fishing, to be installed later when finances are available; Estimated Cost of surveys, $150.00

b. Locate site or sites for shelter house or pavillion for indoor recreation, dancing, etc, to be installed later when finances are available; Estimated Cost of surveys, $100.00

VIII.a. Provide permanent records, maps and field notes, so that the plans of development will be available to and may be followed and completed by future City officials; Estimated Cost, $150.00

IX. Cooperate with State Fish and Game Department -- stock with fish, and beaver if it is advisable. Continue present game preserves in Park areas; No cost to City.

TOTAL, first phase of development, $5000.00

Following the completion of a favorable field examination report, the land was classified for sale under the Recreation and Public Purposes Act on June 16, 1955. The Act permitted the Secretary to develop a sale price for the land "through appraisal or otherwise, after taking into consideration the purposes for which the lands are to be used * * *." 43 U.S.C. § 869-1 (1954). Accordingly, based on the governmental status of the applicant and the public purposes to which the land was to be devoted, appellant was permitted to purchase the land at a price 60% below fair market value. 1/ On March 27, 1957, the United States issued Patent No. 1169648 to the City for the subject land. At that time the Recreation and Public Purposes Act provided that:

1/ At the time of the grant, computation of the deduction was based upon informal BLM policy set forth in Volume 5 of the BLM Manual, Chapter 2.26.14(B). This disposal policy was later formalized in modified form and, as set forth in 43 CFR 1725.2-1, reads as follows:

> (c) Transfer of land to States and local government agencies and to nonprofit organizations to be developed for public purposes will be made at prices and other terms that will encourage and facilitate the accomplishment of the public purposes involved.
>
> (d) Where development is required by law or regulation in lieu of less than full payment, there must be appropriate assurance that the development effort will be bona fide and substantial.

> * * * If at any time after the lands are conveyed by the Government, the grantee or its successor attempts to transfer title to or control over these lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without the consent of the Secretary, title to the lands shall revert to the United States.

43 U.S.C. § 869-2 (1954).

The section further provided that the above provision would cease to be in effect 25 years after the issuance of the patent. The pertinent regulation thereunder provided that:

> All patents under this act will contain a clause providing that if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without consent of competent authority, title shall revert to the United States. This clause will terminate 25 years after issuance of the patent.

43 CFR 254.10(c) (1954). 2/

In accordance with the above requirements of the Act and regulation, the patent under which the City took title to the land in question included a clause which provided that:

> As provided by Section 3 of the act of June 4, 1954, supra, for a period of twenty-five years from date hereof, control over, and title to, the land described herein may be transferred by the grantee or its successor, or the land devoted to a use other than that for which the land is granted, only with the prior consent of the Secretary of the Interior. Should such consent not be obtained, upon the attempt of the grantee or its successor to make such a transfer or change of use within the said period of twenty-five years, title to the land shall revert to the United States. All restrictions, limitations and conditions, contained in this patent, concerning

2/ The present regulation, with some modification, is to the same effect. 43 CFR 2741.8.

> the use of the land, the transfer of title thereto and control thereover, shall cease to be in effect upon the expiration of 25 years from the date of this patent.

This restriction terminates on March 26, 1982, 25 years after issuance of the patent.

On December 20, 1960, the BLM transmitted the following letter to the City of Monte Vista:

> On March 27, 1957, you were issued a patent under the Recreation and Public Purposes Act for the following land: * * *
>
> With your application for purchase of these lands you submitted a proposed plan of development, involving expenditure of a substantial sum of money in improving this land for recreational use. This land was carefully examined prior to the issue of patent, and again on June 3, 1960. The June 3 examination did not disclose evidence of any of the improvements described in the plan of development.
>
> The access road along Rock Creek into the recreation land in Section 35 seems not to have been improved or maintained since patent was issued. It is the intent of Congress, that land acquired through lease or purchase under the Recreation and Public Purposes Act shall be developed for that use and it is the policy of the Department of the Interior and of the Bureau of Land Management to obtain such development as quickly as possible.
>
> We wish to call your attention to your continuing obligation to develop this land consistent with the plan of development submitted in support of your application as the law provides that non-use can result in reversion of title to the United States. (Emphasis added).

On September 19, 1961, the BLM transmitted another letter to appellant observing that no response to its earlier letter had been received and again reminding appellant of its obligation to develop the recreational potential of the patented land in conformance with the development plans submitted in its application for patent. The

BLM noted that recent examinations of the land indicated deterioration rather than improvement on the land. In conclusion, the BLM warned appellant that if it continued in its failure to initiate action on its development plans, the Department would be forced to declare a divestiture of the land pursuant to the reversionary clause in the patent.

By letter dated October 19, 1961, appellant, through its Mayor, responded stating that in 1958 a minimal amount of work was done on the area but was not apparent due to damage caused by heavy runoff from rain and snow in the succeeding years. The main thrust of the letter was to inform the Bureau that the City was postponing development of the land pending the possible purchase of a tract situated between the two parcels granted by the Government. Appellant requested that "an extension of five years * * * be given for further development."

By decision dated May 2, 1962, the BLM pointed out that the intervening private parcel of land had been in the same ownership since the original filing of appellant's patent application, and that the City's justification for not developing the patented land was, therefore, not due to an unforeseen circumstance. The BLM noted that the City's patent application made no mention of purchase of the intervening parcel or of any possible delay in development of the patented lands if purchase of the private parcel was not forthcoming. Accordingly, the BLM rejected appellant's request for a five-year extension for development, but allowed the City a two-year extension subject to certain stipulations regarding submission of an amended plan of development and a timetable for construction.

In 1964, following its continued inability to raise funds for recreational development of the subject lands, the City informed the BLM that it would reconvey the land back to the Government provided it received a refund of the purchase price of $880.00. Thereafter, the BLM made numerous inquiries to the Regional Solicitor and to the General Accounting Office to determine whether authority existed which would permit refunding the City the price it paid for the patent. After considerable investigation, it was determined that the Bureau was without authority to refund the purchase price should the appellant reconvey the lands back to the United States. Action on the matter was then suspended.

In 1972, the BLM initiated another Recreation and Public Purpose Act grant compliance check and the examiner reported the following:

> * * * The tracts' adaptability and suitability for public recreational development have not changed over the years, but none of this development has been realized and in actuality the site value has been allowed to deteriorate so that it has less capacity for public recreational use now than it did nearly 20 years ago. The plan of development for the land is not elaborate, however, in my examination, both this time, and in previous years, I have been unable to detect any of the planned improvements and in fact the access road into the area has gradually deteriorated beyond the condition it was in when I first examined the land in 1954. The road is now barely passable for a passenger car. There are no developed facilities on the tract; the only evidence of facilities are crude fireplaces of small native rocks. There are accumulations of tin cans and other debris from visitor use * * *. There are no sanitation facilities on the tract.

On July 25, 1974, the State Director transmitted a memorandum to the Regional Solicitor, stating his belief that non-development of the land for nearly eighteen years and allowing it to deteriorate were grounds for cancellation of the patent and reversion of title to the United States. The State Director proposed to cancel the patent, or alternatively, if the Regional Solicitor believed that the circumstances did not support outright cancellation, to issue a notice of show-cause why the patent should not be canceled. By memorandum dated January 14, 1975, the Regional Solicitor informed the State Director that the proposed action to cancel appellant's patent and declare a revestiture of title in favor of the United States based on non-development of the land was consistent with the recent decision of this Board in Clark County School District, 18 IBLA 289, 82 I.D. 1 (1975). Accordingly, by its decision dated January 20, 1975, the BLM declared that, "The failure of the City to make any of the uses specified in the Patent of the land for 18 years is deemed to be a violation of the reversionary provision of the Patent and to effect a divestiture of the City's title to the land and the revestiture thereof in the United States."

On appeal, the City of Monte Vista generally presents the following arguments: (a) the only use restriction in the patent is that the City use the described land for recreation and park purposes; (b) the patent does not describe what type of recreation and park purposes are contemplated, and no time limit or construction schedule is designated; (c) the subject land has, in fact, been used for the recreational purposes of hunting, hiking, etc.;

(d) the City has established a "Conservation Trust Fund" which, in part, may be used in conjunction with developing the subject land; and (e) the past and future plans of the City contemplate park and recreational use for the lands and, thus, there exists no just cause why the City should be divested of title.

In his answer to appellant's statement of reasons on appeal, the Solicitor states that appellant has misapprehended its obligation under the Recreation and Public Purposes Act in that the extent of use required by the patent is determined by reference to the development project definitely proposed to the BLM by the patentee as part of its application for patent, and on which the BLM relied in issuing the patent. See Clark County School District, supra at 302, 82 I.D. at 7. The Solicitor also points out that appellant's allegation that the land has, in fact, been used for recreational purposes does not confront the basis for the BLM's decision which declared a divestiture of title on the ground that appellant failed over an 18-year period to develop the land in accordance with the plan of development submitted to the Bureau in appellant's patent application.

[1] In Clark County School District, supra at 300, 82 I.D. at 6, the Board held that the Recreation and Public Purposes Act, the regulations thereunder, and the legislative history of the Act, all indicate that Congress intended that land granted under the Act must be used for the specifically proposed public project presented in the patent application within a reasonable time from the date of issuance of the patent. We noted that land disposed of under the Act was "to be used for an established or definitely proposed project." 43 U.S.C. § 869(a) (1954). 3/

In the present case, the BLM was initially satisfied that the requirements for a "definitely proposed project" were met by the City's detailed plan as set out in its patent application. But as

3/ Regulation 43 CFR 254.5(b) (1954), which was adopted shortly after enactment of the 1954 Act, stated: "Applicants will not be granted title to or use of land under the act except for an established or definitely proposed project. A definitely proposed project is a project which has been authorized by competent authority irrespective of whether or not it has been financed and otherwise fully implemented, providing [sic] that there exists the probability that it will be fully implemented within a reasonable time." (Emphasis added.)

we stated in Clark County School District, supra at 302, 82 I.D. at 7, "The requirement that appellant follow through with its plan to develop a definitely proposed project for use on the land did not expire, however, upon the filing of its application or upon the grant of the patent. The grant * * * was conditioned upon [appellant's] representation to devote the land to public use."

With due respect for the views set forth in the dissent, we do not believe that nonaction permitting road access deterioration and "accumulations of tin cans and other debris from visitor use," fulfilled appellant's responsibility for developing the land for "recreation and park purposes only," in conformance with its proposed plan of development. A similar conclusion was reached in United States v. State of Florida, 482 F.2d 205 (5th Cir. 1973). In the Florida case, the Court was dealing with a grant made pursuant to government surplus property provisions. In 1947, the United States conveyed a parcel of land to the State of Florida by a quit claim deed. Part of the conveyance provided:

> (1) That said property shall be used exclusively for park purposes.
>
> (2) That upon breach of the aforesaid restriction * * * all right, title and interest in and to the property shall, at the option of the party of the first part, revert to the [United States] * * *.

In 1970, the United States gave notice of its intention to exercise the reverter and demanded revestiture of title to the land. The District Court found that the property had not been used exclusively for public park purposes and ordered the title vested in the United States. The Circuit Court affirmed noting that while the land had been used by Boy and Girl Scouts, and also as a pistol range, an elephant grave, a garbage dump, and other diverse uses, nevertheless "to a large extent it has not been used at all and the uses made of it cannot be characterized as uses for public park purposes." (Emphasis added). United States v. State of Florida, supra at 209. For another case of insufficient development leading to reversion of title to the United States, see United States v. Sequoia Union High School District, 145 F. Supp. 177 (N.D. Cal. 1956). 4/

4/ In United States v. Sequoia Union High School District, supra, the court was dealing with an issue arising under the Surplus Property Act of 1944, as amended, 50 U.S.C. § 1622 (1970). In 1948,

[2] As in Clark County, appellant in the present case was frequently reminded of its continuing obligation to develop the land in accordance with its proposed development plan. For over eighteen years the City has not developed the land, and instead the land was permitted to deteriorate. In addition, the City earlier informed the BLM that it would be unable to develop the land and would reconvey it upon return of the purchase price. 5/ Under these circumstances we find that appellant has failed to meet its obligation to develop its definitely proposed project within a reasonable time following issuance of patent. We further find that this non-development of the land over an unreasonable period of time after issuance of patent violated the provision of the Act and patent requiring that the land not be devoted to a use other than that for which the lands were conveyed. Clark County School District, supra at 304, 82 I.D. at 8. Accordingly, we conclude that the BLM was correct in its determination that appellant's failure to comply with the requirements of the patent divested the City of its title and revested the title in the United States. The case is returned to the BLM to undertake appropriate action to remove the cloud on the United States' title.

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fn. 4 (continued)
the United States had conveyed land to the School District pursuant to the Act, and the conveyance contained the following condition:

> "[F]or a period of ten (10) years from the date of this conveyance said premises shall be continuously used as and for school purposes and for incidental purposes pertaining thereto, but for no other purposes."

For approximately five years following the grant, the School District made no use whatsoever of the property except to clear weeds therefrom. Based on this nonuse, the court concluded that the premises were not used for school purposes as required by the statutory condition imposed in the deed. The court then held that forfeiture was effected by breach of this condition.

5/ Appellant's present allegation concerning the existence of a fund which may, in part, be used for the area, and past and future plans contemplating development of the subject land, do not alter our conclusion in this case. Assuming we treat these allegations as an amendment to appellant's original plan, we find it questionable whether this new, vague proposal meets the definition of a "definitely proposed project" as specifically required by the Recreation and Public Purposes Act.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Martin Ritvo
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

I would hold for appellant for the reasons set forth in the dissenting opinion filed in Clark County School District, supra, including the footnote at 318. Appellant's case herein is even stronger than that of Clark County. The patent here provides in part:

> [T]he United States of America * * * does give and grant * * * the tract of land * * * for use for recreation and park purposes only * * *.

The patent further states:

> As provided by Section 3 of the act of June 4, 1954, supra, for a period of twenty-five years from date hereof, control over, or title to, the land described herein may be transferred by the grantee or its successor, or the land devoted to a use other than that for which the land is granted, only with the prior consent of the Secretary of the Interior. Should such consent not be obtained, upon the attempt of the grantee or its successor to make such a transfer or change of use within the said period of twenty-five years, title to the land shall revert to the United States. All restrictions, limitations and conditions, outlined in this patent, concerning the use of the land, the transfer of title thereto and control thereover, shall cease to be in effect upon the expiration of 25 years from the date of this patent. (Emphasis added.)

It will be noted that the above reverter is to operate if the City attempts "to make such a * * * change of use."

I submit that the court decisions cited by the majority should be distinguished. In United States v. State of Florida, supra at 207-09, the deed provided for reversion upon breach of the affirmative requirement that the "property shall be used exclusively for public park purposes." (Emphasis added.) The court found the land "has not * * * been used exclusively for public park purposes; to a large extent it has not been used at all and the uses made of it cannot be characterized as uses for public park purposes." The evidence presented included photographs of no trespassing signs and proof of use as a garbage dump, elephant grave, pistol range and power line right-of-way. The Boy and Girl Scouts also used the land by permit. "[O]ther rather diverse uses by diverse groups of individuals" were permitted.

In United States v. Sequoia Union High School District, supra at 178, grantee was for a period of ten years, to "continuously" use the land "for school purposes and for incidental purposes pertaining thereto, but for no other purposes." The property was never used for school purposes. The court held the land was not so "continuously" used and a forfeiture was declared.

In the case herein, the land has been used for the recreational and park purposes specified in the patent and such use is the only use shown in the record. Although the park has not been developed, many prefer parks left in a more natural state. Unfortunately the degree of use is well evidenced by the "accumulations of tin cans and other debris from visitor use." See September 17, 1972, field check by Bureau of Land Management, supra.

Joseph W. Goss
Administrative Judge